

Remarks

Claims 1-11 have been rejected under 35 USC §101 as being directed to non-statutory subject matter. Specifically, the rejection indicates that the electrocardiograph is being claimed in combination with the human body. This rejection is respectfully traversed for the following reasons.

In the rejection, the position is taken that the use of the article "the" causes the recitation of a "subject" to be a claimed feature of the present invention. However, such an interpretation is clearly incorrect. In the first limitation of claim 1 a body case is recited for holding to a chest portion of a subject. Then, subsequent limitations are recited with respect to the subject so as to connote that all of the features of the claimed invention are with respect to the same subject. It is clear that the use of the article "the" in this manner in no way expressly or by implication includes the subject in the claimed invention. As a result, withdrawal of the rejection under 35 USC §101 is respectfully requested. Further, if this rejection is maintained, it is respectfully requested that a specific portion of the M.P.E.P. be cited for supporting this position, instead of the general recitation of 35 USC 35 §101.

Claims 1-3 and 7-9 have been rejected under 35 USC §102(b) as being anticipated by Granzotto (U.S. 6,757,392). Claims 4-6, 10 and 11 have been rejected under 35 USC §102(b) as being anticipated by Granzotto or, in the alternative, under 35 USC §103(a) as being unpatentable over Granzotto in view of Reinhold, Jr. (U.S. 5,339,823). These rejections are respectfully traversed for the following reasons.

In the "Response to Arguments" section of the Office Action dated May 3, 2007, it is indicated that "[i]n response to Applicant's argument that neither Granzotto nor Reinhold discloses a switching means as recited in claim 1, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art." Based on this comment, it is apparent that the position has been taken that the recitation that the switching means starts detection, display and transmission of the electrocardiographic complex by pressing said body case to the chest portion of the subject, whereby the common electrode and the detecting electrodes come in contact with the chest portion of the subject is intended use language and not entitle to patentable weight. However, such a position is clearly incorrect in light of the fact that the switching means is a means-plus-function limitation. As set forth in 35

USC §112, sixth paragraph, “[a]n element in a claim for a combination may be expressed as a means or step for performing specified function without the recital of structure, material, or acts in support thereof, and such claims shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalence thereof.” It is clear that the position that the functional language set forth with respect to the switching means is intended use language that is not entitled to patentable weight is in error. In fact, the complete recitation of switching means must be given patentable weight. As a result, the previously submitted arguments regarding the above-mentioned rejections are repeated below.

Claim 1 is patentable over Granzotto, since claim 1 recites an electrocardiograph including, in part, a pair of arm portions extending from and being attached to opposite sides of a body case, respectively; a pair of detecting electrodes located at end portions of the pair of arm portions, respectively; and a switching means for starting detection, display and transmission of an electrocardiograph complex by pressing the body case to a chest portion of a subject, whereby a common electrode and the detecting electrodes come into contact with the chest portion of the subject. Granzotto fails to disclose or suggest the switching means of claim 1.

Granzotto discloses an electronic stethoscope including a headpiece 1. The headpiece 1 include a contact ring 20 having a ring section 20a and two arc shaped arms 18 connected to the ring section 20a by pivot joints 19. The arc shaped arms 18 each include an electrode 17. The headpiece 1 also includes a number of sensors 15 and an electrode 16. When the headpiece 1 is used to record an electrocardiogram, the arc shaped arms 18 are swiveled away from the ring section 20a such that the electrodes 17 located thereon are pivoted away from the contact ring 20. Further, headpiece 1 includes an integrated display arrangement 11 which can be used to display the results of the electrocardiogram and a number of operating keys 13 which are used to select between various modes (e.g., electrocardiogram mode) of the headpiece 1. (See column 3, lines 23-36; column 3, line 41 – column 4, line 11; and Figures 1, 3 and 4).

In the rejection, the operating keys 13 are relied upon as corresponding to the claimed switching means. Regarding this, it is noted that the operating keys 13 are used to activate various display fields 12 for the integrated display arrangement 11, one of which is displaying the results of the electrocardiogram. However, there is no disclosure or suggestion in Granzotto that the operating keys 13 start detection, display and transmission of the electrocardiograph by pressing the headpiece 1 to the patient, whereby the electrodes 16, 17 come in contact with the

patient. Therefore, the operating keys 13 do not correspond to the claimed switching means. As a result, claim 1 is patentable over Granzotto.

Regarding Reinhold, it is relied upon as disclosing non-adhesive precordial electrodes. However, Reinhold fails to disclose or suggest the switching means as recited in claim 1.

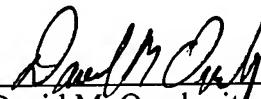
Because of the above-mentioned distinctions, it is believed clear that claims 1-11 are allowable over the references relied upon in the rejections. Furthermore, it is submitted that the distinctions are such that a person having ordinary skill in the art at the time of invention would not have been motivated to make any combination of the references of record in such a manner as to result in, or otherwise render obvious, the present invention as recited in claims 1-11. Therefore, it is submitted that claims 1-11 are clearly allowable over the prior art of record.

In view of the above remarks, it is submitted that the present application is now in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that there are issues remaining which must be resolved before allowance of the application.

Respectfully submitted,

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